

BR

PETITION FOR WRIT OF HABEAS CORPUS
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

PERSONS IN STATE CUSTODY
Erven Walls

RECEIVED

MAR 20 2008 *new*
Mar 20, 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

United States of America ex rel.

Erven Walls #K69769
(Full name and prison number)
(Include name under which convicted)
PETITIONER

vs.

Warden Joseph Loftus
(Name of Warden, Superintendent,
Jailer, or authorized person having
custody of petitioner)
RESPONDENT

and
ATTORNEY GENERAL OF THE STATE OF

* Hon. Lisa Madigan

08CV1638
JUDGE LINDBERG
MAGISTRATE JUDGE NOLAN

(To be supplied by Clerk)

- * This space should be filled in with the name of the state where judgment was entered only if petitioner is attacking a judgement which imposed a sentence to be served in the future. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255 in the federal court which entered the judgment.)

PETITION

1. Name the location of court which entered the judgement of conviction under attack Circuit Court of Cook County
2. Date of judgment of conviction July 16, 1998
3. Length of sentence 15 yrs, 25 yrs and 10 yrs
4. Nature of offense involved (all counts with indictment number of each, if known) Armed Robbery, Armed Violence, and Agg Kidnapping 97CR30453^{el}

5. What was your plea? (Check One)

(A) Not guilty

(B) Guilty

(C) Nolo contendere

(☒)
()
()

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

D/A

6. Kind of trial: (Check One)

(A) Jury

(B) Judge only

(☒)
()

7. Did you testify at trial?

YES ()

NO (☒)

8. Did you appeal from the judgment of conviction or imposition of sentence?

YES (☒)

NO ()

(A) If you did appeal, answer the following:

(1) Name of court Appellate Court First Dis.

(2) Result Re-sentenced Remand other Convictions Affirmed.

(3) Date of result 6-11-01

(4) Issues of raised Brady, Effective Assistance of Counsel, consecutive sentences, safe Neighborhood Act

(B) If you did not appeal, explain briefly why not.

D/A

9. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed with respect to this conviction:

(A) Any petition in a state court under the Illinois Post-Conviction Hearing Act, Ill.Rev. Stat. ch. 38, sec. 122?

YES () NO (✓)

(B) Any petitions in a state court by way of statutory coram nobis, Ill.Rev. Stat. ch. 110, sec 72?

YES () NO (✓)

(C) Any petitions for habeas corpus in state or federal courts?

YES () NO (✓)

(D) Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in question (9)?

YES () NO (✓)

(E) Any other petitions, motions, or applications in this or other court?

YES (✓) NO ()

10. If your answer to any section of questions (9) was YES, give the following information:

(A) (1) Name of court Appellate Court First District

- (2) Nature of proceeding Appealed Re-sentenced Armed violence
Count that was Remanded.
- (3) Grounds raised Due process violation on Equal rights of
Sentence to CO-Defendant Delores Jinadu, failed to reduce 25yr
sentence, prejudice and bias, excessive sentence.
- (4) Did you receive and evidentiary hearing on your petition,
application, or motion?
YES () NO (✓)
- (5) Result Affirmed
- (6) Date of result July 25, 2003

(B) As to any second petition, application, or motion, give the same information:

- (1) Name of court Circuit court of cook county.
- (2) Nature of proceeding Pro se Post-conviction Relief
- (3) Grounds raised List of a constitutional violation, Coerced
Confessions and ineffective assistance of counsel.
- (4) Did you receive and evidentiary hearing on your petition,
application, or motion?
YES () NO (✓)
- (5) Result Pro se Post-conviction Dismissed
- (6) Date of result Dec. 14, 2001

(C) As to any third petition, application, or motion, give the same information:

- (1) Name of court Circuit court of cook county
- (2) Nature of proceeding Pro se Successive Post-Conviction

Relief

- (3) Grounds raised perjury, refused to allow cross-examine, illegal arrest, Identification, Judge denied continuance to get all documents, ineffective assis counsel, Search and Seizure no warrant, Informant

- (4) Did you receive and evidentiary hearing on your petition, application, or motion?

YES () NO (☒)

- (5) Result Pro se successive post-conviction Relief Dismissed

- (6) Date of result May 17, 2004

- (D) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application, or motion?

- | | | |
|---------------------------|---|--------|
| (1) First petition, etc. | YES (<input checked="" type="checkbox"/>) | NO () |
| (2) Second petition, etc. | YES (<input checked="" type="checkbox"/>) | NO () |
| (3) Third petition, etc. | YES (<input checked="" type="checkbox"/>) | NO () |

- (E) If you did not appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

D/A

11. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

CAUTION: BEFORE PROCEEDING IN THE FEDERAL COURT, YOU MUST ORDINARILY FIRST EXHAUST YOUR STATE COURT REMEDIES AS TO EACH GROUND ON WHICH YOU REQUEST ACTION BY THE FEDERAL COURT.

- (A) Ground one Brady violation, withheld evidence;
Supporting FACTS (tell your story briefly without citing cases or law):

The state did not tender Brady Material prior to trial concerning evidence of the victim's INS status. Prior to trial, defense counsel requested information concerning the victim's criminal background as well as his immigration status. Although prior to trial the state maintain it did not have any information concerning any INS investigation, post-trial they were able to come up with such information. After defense counsel pressed this issue in preparing his motion for a new trial, the state tendered him an INS file number and the name of an investigator. At that time, the state offered no explanation why that was not turned over earlier or how they now come into its possession after previously claiming there was no such material.

- (B) Ground two: Denied Effective Assistance of Counsel:
Supporting FACTS (tell your story briefly without citing cases or law):

Counsel failed to uncover the victim's INS file prior to trial and waited until after a guilty verdict to subpoena the file. While trial counsel repeatedly requested information concerning the victim's background from the state, he made no attempt to subpoena or investigate prior to trial the victim's status as an illegal alien subject to deportation by the INS. Prior to trial, defense counsel believed that there was an INS investigation concerning the victim. However, he simply relied on the state conducting an INS search and did not seem to undertake one himself. In his pre-sentence report, the victim acknowledged that he could not return to Nigeria and later told trial counsel that there was in fact an INS investigation going on before trial about his relationship with his wife, a co-defendant.

- (C) Ground three: Perjured Testimony to stand uncorrected;
Supporting FACTS (tell your story briefly without citing cases or law):

The victim related that, Petitioner handcuffed him, yet all of his statements say that he was unconscious, that is two conflicting statements; Victim alleged that he was hit with a bat and a chisel, yet neither item was recovered. Mr. Jinadu lied on the witness stand about his American status in this country, about the events which took place regarding this crime. In his pre-sentence report, the victim acknowledged that he could not return to Nigeria and later told trial counsel that there was in fact an INS investigation going on before trial about his relationship with his wife.

This testimony was the only testimony the jury heard on nobody corroborated this testimony.

- (D) Ground Four: Gist of A CONSTITUTIONAL VIOLATION;
Supporting FACTS (tell your story briefly without citing cases or law):

Petitioner Erven Walls filed a post-conviction petition. He raised the ineffective assistance of both his trial and appellate attorneys. Petitioner attorneys did not pursue his claim of an involuntary statement based on police interrogation despite his request for counsel. The police coerced petitioner statement through physical abuse. Mr. Walls attached affidavits of witnesses demonstrating that before his arrest, he was not injured. Two of the witnesses saw Mr. Walls a few days later in court, and he was injured. Mr. Walls, in his own affidavit informed trial counsel that he had been beaten by police. A motion was filed to suppress statement but the lawyer failed to challenge police testimony that no physical abuse occurred by calling Mr. Walls witnesses. Mr. Walls produced a lockup sheet showing that when he entered Jail he had no injuries. The trial court in its order failed to address the affidavits of the three witnesses and Mr. Walls.

(E) Ground five: The Judge and ASA refused to allow defendant's attorney to cross-examine officer Alonzo Jackson, at oral statement suppression hearing;

officer Alonzo Jackson is the partner of officer Bradley, and these are the arresting officers whom which both had contact and question Mr. Walls the defendant at separate times. Mr. Walls attorney was allowed to cross-examine officer Bradley, and when finish with that cross-examine the attorney requested to cross-examine officer Jackson the court and ASA refused to allow the defendant to cross-examine the officer, and it was denied. This officer question the defendant while he was in police custody at a separate time. So the defendant continued the questioning of officer Bradley on cross-examine. Then the court ended the suppression hearing while the defendant attorney was cross-examining the officer Bradley, and the court denied the motion to suppress oral statement.

(F) Ground six: Petitioner's arrest was illegal and lacked probable cause;

When Mr. Walls was arrested leaving the Courtroom on the 17th day of Sep. 1997, in the City of Chicago, he was arrested on bare suspicion, he was

arrested by the Chicago Police without Miranda Warning read to him or even informed as to the reason he was being arrested, if the arresting officer had possessed more than Bare Suspicion, Mr. Walls would not have

been subject to having to sit chained to the wall of an interview room at Area 3 Police station from noon until 8:00 pm while the arresting officers let Mr. Walls be seen by Mr. Jinadu before being placed into a line-up.

Chicago Police Det. Vernon Bradley was assigned as a follow up investigator on 5-12-97, and as soon as he learned the names of the possible suspect

and that Mr. Walls was in a courtroom, he went to that location and arrested Petitioner, without a warrant and without the necessary probable cause to effect

the arrest. As soon as the victim went to the house he was hit on the head with a bat and lost consciousness, the victims own testimony show that he did not see who hit him, nor did he see anyone in the apartment before he walked in. Petitioner

in this case had a relationship with the victims ex-wife and lived with her from time to time. The only person Mr. Jinadu identified by name was that of his ex-wife, although he knew Petitioner.

(G) Ground Seven: Identification;

The victim related that, petitioner handcuffed him, yet all of his statements say that he was unconscious for at lease two or three hours. As soon as the victim went to the house he was knock unconscious and he did not see anyone before he went in the apartment nor did he see who hit him. At the grandjury the victim testimony was that he saw two dark skinned guys, and one light skinned guy standing in front of the building where he was being held at, and those three guys was holding him, this is what the victim said at the grandjury and not one time mention Petitioner name or describe petitioner, and he no the petitioner the victim does. When the ASA say now you no this person to have hit you to be Mr. Erven Walls and then the victim agrees with the ASA. The officers showed the victim a photo picture ID card to the victim. The arresting officers let the victim see the petitioner before the lineup. The victim stated that he was upset and jealous when he was cross-examined by Petitioner Attorney because Petitioner had a relationship with ~~victim~~ the victim ex-wife. The police reports even have different names on the report and the Petitioner name is on the report because of the traffic tickets that was taken from the apartment where the petitioner live from time to time with the victim ex-wife. The police have the same complexion on there police reports which the victim gave them these descriptions. The petitioner is brown skinned.

(H) Ground Eight: Judge denied defendant continuance to get all the documents needed to thoroughly cross-examine plaintiff, the documents goes to the credibility of plaintiff;

The Petitioner attorney ask for a continuance at the pre-sentence hearing to set a date up to go and get the INS file from there attorney, because the victim lied in his pre-sentence report. The Petitioner attorney received a case number from the states Attorney.

Petitioner Attorney proceed to get intouch with the INS about the on going investigation on the plaintiff. The defendant Attorney had to go through a process to try and get the documents on the on going investigation but the court denied the defendant attorney the continuance to proceed to get the documents. Mr. Walls attorney was left with no other choice but to cross-examine the victim without the file. To fully cross-examine the victim at the pre-sentence hearing the Petitioner attorney needed the case file from the INS.

Mr. Jinady is the victim and is the state only witness against the Petitioner. The victim already committed perjury in trial about his american status, on a pre-sentence report the victim say something totally different from what he said in trial. The Judge made the plaintiff get off the stand at the pre-sentence hearing before defendant attorney could finish cross-examine.

(I) Ground Nine: Ineffective assistance of Counsel;

The Petitioner Erven Walls was Denied Effective assistance of counsel on Direct Appeal, When Appellate Counsel failed to raise on direct appeal that the Petitioner's trial counsel was ineffective for failing to object to arresting officers continued custodial interrogation despite the petitioner's repeated request for counsel during interrogation. Petitioner's appellate counsel failed to raise significant and obvious issues on direct appeal, issues that were material to the petitioner's direct appeal, where if raised, there would be a reasonable Probability of a different outcome of the appeal. The appellate counsel's decision to ignore the viable issue of trial counsel's ineffectiveness of failing to object to arresting officers continued interrogations despite the petitioners request for counsel. The petitioner was arrested and questioned by Chicago detectives Alonzo Jackson *20819 A/3 VC, and Vernon Bradley *21179 A/3 VC., for the charged crimes. At the initial stage of the interrogation the petitioner repeatedly requested counsel be called for the petitioner to aid him during questioning. Despite these request made by the petitioner, the interrogations continued.

Continue to next pg →

(I) Ground Nine: Continued Page 3 of first page, of ground nine.

Arresting officers Jackson and Bradley continued interrogations despite the Petitioner's request for counsel, and as a result thereof, a tainted statement was used as material evidence at his trial, and ultimately caused the Petitioner's conviction. The petitioner advanced all of this information to his trial counsel before trial and counsel failed to timely object to the same. Appellate counsel was equally ineffective, where had appellate counsel raised this issue on direct appeal, the appellate court would have had an opportunity to consider the legal question of the oral statement, unlawful interrogation, and manner in which it was elicited. The petitioner contends that his direct appeal could have ended in reversal, but for the inaction of his appellate counsel, failed to argue on Direct appeal.

(J) Ground Ten: The entry into the apartment by the police, and the seizure of items there in, was unconstitutional, absent a warrant; The victim testified on record that he didn't hear anyone in the apartment talking and then he got his hands in front and freed his legs, and he left the apartment and when he got outside the building he seen the three guys that was holding him sitting on the school steps across the street of the building he just came out of, and he start yelling for help, and the three dudes start running away as the victim ran towards Thorndale, and this testimony was said at the Petitioner trial. Petitioner in this case had a relationship with the victims ex-wife and from time to time lived with Delores. However, Chicago Police officer Mario Ramirez testified that on 5-10-97, he and his partner, officer Schmidt, were in a marked police car at the corner of Thorndale and Winthrop when they were hailed over by a young boy who directed them to the victim. The victim lead officers Ramirez and Schmidt to an apartment located at 5831 North Winthrop. Once inside the apartment, the officers recovered several pieces of identification that belonged to the petitioner and a alleged co-defendant, officers Ramirez and Schmidt showed the victim a photo I.D of the petitioner inside the apartment, the victim testified that these officers showed him the Photo I.D. However officers Mario Ramirez testified that when he entered the apartment there was two guns sitting on top of the bed and he saw hundreds of plastic bags, a scale, white powder, spoons and breathing masks, and the fact that various pieces of identification being found in the apartment is not unreasonable, especially, when considering the fact that Delores is the girlfriend of the petitioner. Petitioner was the live in boyfriend of Delores and it's been establish on record that defendant lived at 5831 North Winthrop. ■ Continue to next PG →

(J) Ground Ten: Continued Page ; of First page, of ground ten.

The inadequate procedures also allowed evidence that were seized without a warrant to be used in the trial, when the police entered the residence where they obtained information concerning the defendant and the others the Police officers did not secure a warrant, Procedurally the police were only suppose to secure the crime scene, secure a warrant, and call the evidence Technician to process the crime scene.

(K) Ground Eleven: The Petitioner's request to produce informant was denied;

Petitioner attorney on cross-examine to officer Bradley about how did he find out the whereabouts of Mr. Walls location on Sep. 17, 1997, the officer stated that a reliable informant told him the whereabouts of Mr. Walls on Sep 17, 1997 and the officer stated that the informant told him details about the allege crime. Petitioner attorney cross-examine this officer on the day of Motion to suppress oral statement hearing. Petitioner attorney requested that the informant be produced to be confronted by the defendant.

Because of this reliable informant, and this officer received so much details from this person of reliable source, Mr. Walls attorney requested to be given a chance to cross-examine this informant. These request are on record, because the judge denied the Petitioner request to confront this informant.

(L) Ground Twelve: Effective Assistance of Appellate Counsel on Direct Appeal;

The Petitioner Erven Walls was denied his right to Effective Assistance of appellate Counsel on direct appeal. Petitioner appellate counsel failed to argue on direct appeal that the Post ARREST oral statement that was admitted in the petitioner's trial against him was the product of a physical beating inflicted by arresting officers to induce the oral statement. In the instant case, the petitioner's appellate counsel's decision not to argue on direct appeal that arresting officers beat him during interrogation to induce a oral statement from the petitioner was a serious error in professional Judgment, that prejudiced the defense, where the judgment is not one assumed to have produced a just result. On Sep. 17, 1997 officers Vernon Bradley and Alonzo Jackson arrested the petitioner. Terry Walls, Sabrina Walls, and Nina Garner were all with the petitioner right before his arrest. Each of these witnesses signed a affidavit deposing that. Continue to next pg →

(L) Ground Twelve, continued page; of first page, of ground Twelve.

The petitioner had no injuries prior to his arrest. This account was confirmed by a report prepared at the Belmont and Western police station lockup, the mentioned report stated that; When the defendant "Walls" was brought to lockup, he had no obvious pain or injury. It is very unconscionable that the Petitioner's appellate counsel failed to raise this very crucial issue on direct appeal, where said issue is very material in the induction of the state's main body of evidence.

A full reading and view of the police reports clearly indicate that the petitioner sustained physical injuries, and any theory that these injuries were sustained before the petitioner's arrest, would be inconsistent with the ~~my~~ original police reports, and the petitioner's eye witnesses.

In December 2001 The defendant was being resentenced on an armed violence count. At that period of time the minimum sentence for armed violence was 15yrs in the Illinois Department of corrections. It reverted back to 6yrs. However the judge sentenced the defendant the first time to 25yrs, 10yrs above the minimum sentence. The defendant co-defendant was sentence to 15yrs after the co-defendant put in a motion for time reduction after the first sentence was imposed and it was 25yrs, and then after the safe neighborhood act was ruled unconstitutional the minimum sentence was reverted back to 6yrs and then the co-defendant Delores Jinadu was given 6yrs who was charge with the same thing the Petitioner was charge with, and the Petitioner suppose to have been given the same justice of equal rights as the co-defendant was giving, On January 3, 2002 the motion for reconsideration was heard, and trial judge never adequately consider the Petitioner rehabilitative potential and the completed certificates of anger management classes, criminal alternative change group, and parenting classes. The trial Judge has been vigilentive towards Petitioner and prejudice because if the trial judge was'nt being vigilentive or prejudice and bias the Petitioner would have been given the same equal rights as the CO-Defendant Delores Jinadu and the defendant time would've been reduce to the minimum sentence like the CO-defendant in this case was given, and all accumulated and significant amount of mitigation would've been considered and the Petitioner would've prevailed. The Petitioner never been convicted of a class X felony or never been to prison, and the sentence is excessive. The Petitioner class X convictions fits the same as the CO-defendant Delores Jinadu, and all these facts are on record.

On October 13, 1998, Petitioner was sentenced to twenty five years imprisonment for armed Violence, fifteen years imprisonment for armed robbery and ten years imprisonment for aggravated Kidnapping.

That the trial judge indicated the legislature has stated that Petitioner's sentences must be served consecutively. The trial judge also noted that the victim was severely impacted by his injuries. The judge sentence Petitioner to consecutive sentences in cases of multiple convictions arising out of a single course of conduct and the court found that the petitioner inflicted severe bodily injury and not a trial by jury.

12. Have all grounds raised in this petition been presented to the highest court having jurisdiction?

YES (✓) NO ()

13. If you answered "NO" to question (12), state briefly what grounds were not so presented, and give your reasons for not presenting them:

P/A

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

YES () NO (✓)

(A) If yes, state the name of the court and the nature of the proceeding.

P/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(A) At preliminary hearing Grand jury indictment; I never had a preliminary hearing.

(B) At arraignment and plea Dayna Woodbury Public defender
2650 S California Chgo, IL 60608 7th Floor

(C) At trial Daniel L. Franks Private Attorney
120 S Riverside Plaza suite 1150 Chgo, IL 60606-3910

(D) At sentencing Daniel L. Franks Private Attorney
120 S Riverside Plaza suite 1150 Chgo, IL 60606-3910

(E) On appeal Kwame Raoul Jean + Baptiste + Raoul Law firm
1900 Ashbury Ave Evanston, IL 60201

- (F) In any post-conviction proceeding First Post-Conviction
Pro se, Successive Post-Conviction Pro se also.
- (G) On appeal from any adverse ruling in a post-conviction proceeding Original Post-Conviction appeal Denise R. Avant,
Successive Post-Conviction appeal Pro se.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
 YES (☒) NO (☐)

17. Do you have any future sentence to serve after you complete the sentence imposed by judgment under attack?
 YES (☐) NO (☒)

- (A) If YES, give the name and location of the court which imposed sentence to be served in the future:

D/A

- (B) And give the date and length of sentence to be served in the future

P/A

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

 Signature of attorney (if any)

Mr. Even Wallat
 Signature of petitioner

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 3-13-08
 (Date)

Mr. Even Wallat
 (Signature of petitioner)

K69769
 (I.D. Number)

3820 E Main St Danville, IL 61834
 (Address)